

25. (Original) A method of sampling an exhaust gas from an internal combustion engine, comprising the steps of:

positioning a plurality of diluters in a serial array along on axial extent;

connecting a source of gas fluidically to said plurality of diluters supplying a gas stream into each one of said plurality of diluters;

supplying a source of a dilution air to each one of said plurality of diluters, said supply of dilution air progressively diluting said gas stream as said gas stream flows through said plurality of diluters; and

sampling said gas stream at each one of said plurality of diluters.

REMARKS

Reconsideration of the claims is respectfully requested.

No new matter has been added by this amendment.

Claims 1-25 remain in the application.

The Examiner has objected to the drawing and indicated, "...they include the following reference signal(s) not mentioned in the description:

114(page 4, lines 3, 7). Should the '144' in Figure 1 read -- 114 --? Correction is required." Applicant has amended the drawing to include the reference numeral - - 114 -- verses the reference numeral -- 144 -- . Applicant contends that the correction and amendment thereof overcomes the Examiner's objection of the drawings.

The Examiner has rejected claims 1-12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner further states, "As to claim 1, 'said gas stream' (line 11) lack

antecedent basis.” Applicant has amended claim 1 to provide proper antecedent basis for the phrase “gas stream” and contends that the amendment overcomes the Examiner’s objection under 35 U.S.C. 112 above. And, the Examiner further states, “As to claim 5; ‘on’ (second line of the claim) should read -- one --.” Applicant has amended claim 5 to include the word “one” verses “on” and contends that the amendment thereof overcomes the Examiner’s rejection 35 U.S.C. 112.

The Examiner has rejected claims 1-3 under 35 U.S.C. 103 (a) as being unpatentable over d’Appollonia et al. The Examiner states “d’Appollonia does not state that the inert gas is air, and the written specification does not state that the diluters are along and axial extent.” At least this point makes the claimed invention patentably distinct. It is the Applicant’s opinion that this distinct limitation has been under considered. The arrangement of the diluters being along an axial extent is at least one aspect which functionally and operationally makes the present claimed serial multistage aerosol diluter and control system distinct.

In rejecting a claimed invention under 35U.S.C. 103(a), the Examiner has the initial burden to establish a prima facie case of obviousness by complying with the requirements of MPEP 2143. Specifically, MPEP 2143 mandates that:

“three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations....”

(emphasis added)

Applicant contends that this is not the case in the Examiner's application of d'Apollonia. The limitation of the diluters "along an axial extent" is not taught or suggested in the cited art. In numerous examples by the Applicant, see pages 18 and 19 of the application, the importance of the claimed limitation is expounded thereon. Thus, Applicant contends that the Examiner's rejection of independent claim 1 is unfounded considering the importance of the claimed limitation that diluters are "along an axial extent."

Applicant contends that with the allowance of independent claim 1, claims 2 and 3 add further limitation to an allowable claim and are thus also allowable.

The Examiner has rejected claims 13-15, and 25 under 35 U.S.C. 103(a) as being unpatentable over d'Appollonia et al in view of Graze, Jr. Applicant further contends that the comments stated above regarding independent claim 1 similarly apply here. And, as substantially restated are: In rejecting a claimed invention under 35 U.S.C. 103(a), the Examiner has the initial burden to establish a *prima facie* case of obviousness by complying with the requirements of MPEP 2143. Specifically, MPEP 2143 mandates that:

"three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations...."

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The Examiner has objected to claims 16-24 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitation of the base claim and any intervening claims. Applicant has amended claim 16 into independent form including all of the limitation of the base claim and contends that the amended claim 16 is allowable. Dependent claims 14 and 15 have been amended to dependent from allowable independent claim 16 and add further limitations to an allowable claim, and are thus also allowable.

It is respectfully urged that the subject application is in condition for allowance and allowance of the application at issue is respectfully requested.

Respectfully submitted,



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